Calendar No. 416

99TH CONGRESS
1st Session

SENATE

REPORT
99-186

AUTHORIZING THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LAND LOCATED IN THE STATE OF MARYLAND TO THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOVEMBER 18, 1985.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 3003]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 3003) to authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland-National Capital Park and Planning Commission, having considered the same, reports favorably thereon with an amendment to the text and recommends that the Act (as amended) do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a)(1) notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to convey, without monetary consideration, to the Maryland-National Capital Park and Planning Commission all right, title, and interest of the United States to a parcel of land comprising approximately fifty-five acres located in Prince Georges County, Maryland.

(2) Except as provided in subsection (b), the land conveyed pursuant to paragraph (1) shall be used solely for part and outdoor recreation purposes in accordance with a land use plan for the property prepared by the Maryland-National Capital Park and Planning Commission and submitted to the National Capital Planning Commission for review and comment. The instrument for conveyance for the real property conveyed pursuant to subsection (a) shall set forth all terms and conditions of the conveyance. Such instrument shall further provide that all right, title, and interest conveyed to the Maryland-National Capital Park and Planning Commission pursuant to such instrument, except such access as is authorized by subsection (b)(1), shall revert to the United States if such land is used for any purpose other than as stated in this paragraph.

(3) As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the area designated under paragraph (1) with the Committee on Interior and Insular Affairs, United States House of Representatives, and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act, except that the correction of clerical and typographical errors

71-010 O

S313-18

in such legal description and map may be made. Such map and legal description shall be on file in the office of the regional director, National Park Service in the National Capital Park Region.

(4) The Maryland-National Capital Park and Planning Commission shall reimburse the Secretary of the Interior for the costs of the land conveyance described in paragraph (1).

(b)(1) Subject to the provisions of this subsection, the Maryland-National Capital Park and Planning Commission may grant access across the real property conveyed pursuant to subsection (a) to the owner of the adjacent real property contingent upon each of the following:

(A) Submission by the owner of the adjacent real property of a land use and development plan, incorporating the provisions of the memorandum of May 7, 1985, to the National Capital Planning Commission for review and comment;

(B) Approval of the terms and conditions of the memorandum of May 7, 1985, by the Prince Georges County Council;

(C) Compliance by the owner of the adjacent real property seeking such access with the terms and conditions of the memorandum of May 7, 1985, as determined by the National Capital Planning Commission;

(D) Conveyance by the owner of the adjacent real property to the National Capital Planning Commission of an easement in perpetuity which shall run with the land, incorporate the restrictions on development contained in the memorandum of May 7, 1985, and incorporate any other land restrictions imposed by Prince Georges County; and

(E) The availability for such access for public use.

(2) The owner of the adjacent real property shall obtain appropriate road construction bonds as required by State and local government regulation prior to the construction of such access road, and shall establish an interest bearing escrow account in an amount necessary to insure the protection of the surrounding parkland and compliance with the conditions of paragraph (b)(1). Such amount shall be determined by the owner of the adjacent real property and the Maryland-National Capital Park and Planning Commission. Following completion of such public use access road, and review by the Maryland-National Capital Park and Planning Commission, said escrow account shall be returned to the owner of the adjacent real property.

(3)(A) The National Capital Planning Commission and the Maryland-National Capital Park and Planning Commission shall make a copy of the memorandum of May 7, 1985, available for public inspection in the offices of each commission during business hours.

(B) Upon approval of any proposed amendment by both of the parties to the memorandum of May 7, 1985, the proposed amendment shall be published in the Federal Register and concurrently submitted to the congressional committees referred to in subsection (a)(3). The amendment shall not be effective until 60 calendar days after it has been transmitted to the committees.

(c) For purposes of this Act—

(1) the term "Memorandum of May 7, 1985" means the memorandum of understanding entered into on May 7, 1985, between the National Capital Planning Commission and the owner of the real property adjacent to the land to be conveyed pursuant to subsection (a)(1); and

(2) the term "owner of the adjacent real property" means the owner of the adjacent real property, its successors or assigns, as described in the memorandum of understanding entered into on May 7, 1985.

Purpose of the Measure

The purpose of H.R. 3003 is to convey approximately 55 acres of Federal land without monetary consideration to the Maryland-National Capital Park and Planning Commission (M-NCPPC) for park and outdoor recreation purposes. The Act also provides for access across the conveyed property to the owner of adjacent land for a proposed development project, pursuant to a memorandum of understanding between the National Capital Planning Commission and the owner of the adjacent land.

Background and Need

The approximately 55 acres transferred by this Act are located in Prince Georges County, Maryland, just south of the Woodrow Wilson Bridge in an area known as "Smoot Bay". The property was acquired by the Federal Highway Adminstration for the construction of the Woodrow Wilson Bridge. It was later determined that this acreage was needed for highway purposes and was transferred to the National Park Service to be managed as part of the George Washington Memorial Parkway pursuant to Public Law 84-534 (70 Stat. 184).

H.R. 3003 provides for the transfer of the 55-acre parcel to the Maryland-National Capital Park and Planning Commission for park and outdoor recreation purposes. The Act also permits the M-NCPPC to grant access across the land to JTL Enterprises, Ltd., contingent upon that entity's compliance with development restrictions contained in a memorandum of understanding (MOU) entered into on May 7, 1985, by the National Capital Planning Commission (NCPC) and JTL Enterprises, Ltd. The NCPC entered into that agreement under its authority granted by the Act of May 29, 1930 (46 Stat. 1482), as amended, known as the "Capper-Cramton Act" providing for the acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac River from Mount Vernon (in Virginia) and from Fort Washington (in Maryland) to Great Falls. That Act specifically calls for the NCPC to be a party to the selection of lands to be acquired.

JTL Enterprises, Ltd. has proposed to build a multi-million dollar mixed use waterfront development on private land adjacent to the Federal parcel. The development is to include a marina, homes, retail shops and boutiques. The Prince Georges County Council has approved zoning for the proposed development.

As compensation to the Federal Government for the land conveyed and the access corridor, the MOU places limitations on what the developer can build on private land adjacent to the Federal parcel. The MOU addresses, among other restrictions, preservation of open space along the waterfront, trails, building heights, landscaping, views and marina development.

H.R. 3003 provides for reversion of the conveyed land (except for the access granted) to the United States if it is not used for specified purposes. The bill also requires the developer to grant an easement in perpetuity to the NCPC incorporating the restrictions of the MOU, and further provides that the M-NCPPC shall assume all administrative costs associated with the transfer.

Legislative History

H.R. 3003 was introduced on July 16, 1985. It was reported by the House Committee on Interior and Insular Affairs on October 17, 1985, and passed by the House on October 23, 1985. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on a companion measure, S. 1208, on July 12, 1985.

At a business meeting on November 6, 1985, the Senate Committee on Energy and Natural Resources ordered H.R. 3003, as amended, favorably reported.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on November 6, 1985, by unanimous vote of a quorum present recommends that the Senate pass H.R. 3003, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici*	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford	
Mr. Metzenbaum	
Mr. Bradley	
Mr. Bingaman*	
Mr. Rockefeller*	

* Indicates vote by proxy.

Committee Amendment

The Committee amendment in the nature of a substitute to H.R. 3003 directs the Secretary of the Interior to convey the 55-acre Federal parcel to the Maryland-National Capital Park and Planning Commission. As approved by the House of Representatives, H.R. 3003 provides only the authorization for the Secretary of the Interior to transfer the property.

The Committee amendment also contains a requirement that the owner of the adjacent real property establish an escrow account (in an amount to be determined by the Maryland-National Capital Park and Planning Commission and the owner of the adjacent real property) to insure that any damage to parkland caused by construction of the access road will be remedied. Such funds shall be returned after construction of the road has been completed. The amendment further requires that the access road shall be for public use.

For clarifying purposes, the Committee amendment defines the terms "memorandum of May 7, 1985" and "owner of the adjacent real property". The amendment also deletes language that Congressional Committees of jurisdiction comment on proposed changes to the memorandum of understanding.

SECTION-BY-SECTION ANALYSIS

Section (a)(1) authorizes and directs the Secretary of the Interior to convey approximately 55 acres of land in Prince Georges County, Maryland to the Maryland-National Capital Park and Planning Commission.

Section (a)(2) provides that the land will be used for public park and outdoor recreation purposes and provides that, except for an access road as set forth in subsection (b), the property will revert to the United States if the land is used for any other purpose.

Section (a)(3) requires the Secretary of the Interior to file a map and description of the land to be conveyed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

Section (a)(4) requires the Maryland-National Capital Park and Planning Commission to reimburse the Secretary of the Interior for the costs incurred by the Secretary in the conveyance of the land, including the costs associated with preparing the map of the property. The Park Service has estimated that such conveyance costs are not expected to exceed $10,000.

Section (b)(1) would permit the Maryland-National Capital Park and Planning Commission to grant an access easement across the proprety to the owner of the adjacent real property. Prior to granting such access, all of the following criteria must be met: (1) the adjacent landowner must submit a development plan, incorporating the provisions of a described memorandum (said memorandum is incorporated as an appendix to this report), to the National Capital Planning Commission for review; (2) the Prince Georges County Council must approve the described memorandum of understanding; (3) the owner of the adjacent real property must comply with the terms and conditions of the described memorandum; (4) the owner of the adjacent property must convey an easement to the National Capital Planning Commission, incorporating the restrictions contained in the described memorandum; and (5) the access must be for public use.

The Committee intends that only one road shall be constructed across the land to be conveyed to the Maryland-National Capital Park and Planning Commission.

Section (b)(2) requires the owner of the adjacent property to establish an escrow account in an amount necessary to restore any damage to parkland during construction of the access road. Such amount shall be determined by the Maryland-National Capital Planning Commission and the owner of the adjacent land and shall be returned after completion of the road and review by the Maryland-National Capital Park and Planning Commission.

Section (b)(3)(A) requires the National Capital Planning Commission and the Maryland-National Capital Park and Planning Commission to make the memorandum of understanding of May 7, 1985, available for public inspection.

Section (b)(3)(B) sets forth the process by which the memorandum of understanding may be modified.

The Committee notes that the memorandum of understanding between the National Capital Planning Commission and JTL En-

terprises, Ltd., dated May 7, 1985, which is incorporated by reference [(paragraph (b)(1)], contains typographical errors. The body of the agreement and signature line reference James T. Lewis Capital Enterprises, Ltd., and J.T.L. Inc., respectively, rather than JTL Enterprises, Ltd. The Committee recognizes that JTL Enterprises, Ltd. is the corporate entity bound by this agreement and has been assured that JTL Enterprises, Ltd. will comply fully with the terms and conditions of the memorandum of understanding.

Section (c)(1) sets forth the definition of the term "Memorandum of May 7, 1985".

Section (c)(2) sets forth the definition of the term "owner of the adjacent real property".

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 7, 1985.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3003, a bill to authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland-National Capital Park and Planning Commission, as amended and ordered reported by the Senate Committee on Energy and Natural Resources, November 6, 1985. We expect that enactment of this bill would not have any significant impact on the budgets of federal. state, or local governments.

H.R. 3003 would authorize the Secretary of the Interior to convey, without consideration, its right, title, and interest in about 55 acres of land located in Prince Georges County, Maryland. The land would be conveyed to the Maryland-National Capital Park and Planning Commission, which would be required to reimburse the federal government for any costs associate with the transfer. Such costs are not expected to exceed $10,000.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely

Rudolph G. Penner.

Regulatory Impact Evaluation

The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in implementing the measure. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from enactment of H.R. 3003.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and the Department of the Interior setting forth executive agency recommendation relating to H.R. 3003 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 8, 1985.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 3003, as enacted by the House of Representatives, "To authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland-National Capital Park and Planning Commission."

We have no objection to enactment by the Senate of H.R. 3003, if it is amended as outlined below.

H.R. 3003 would authorize the Secretary of the Interior to convey land in the vicinity of the Washington Beltway near I-95 and I-295 at the Woodrow Wilson Bridge to the Maryland-National Capital Park and Planning Commission without cost. The Commission would be authorized to use the land so conveyed for park and outdoor waterfront recreation purposes, and would be authorized to grant access across the real property conveyed to the owner of real property adjacent to such real property. The owner of the adjacent real property to whom access could be granted is a developer seeking to develop property known as "Smoot Bay". A sizable, private mixed-use development is planned for that property, and the access allowed under H.R. 3003 would be necessary for the proposed development to proceed.

The Act of May 29, 1930 (46 Stat. 1482), as amended, known as the "Capper-Cramton Act", provides for the acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac River from Mount Vernon (in Virginia) and from Fort Washington (in Maryland) to Great Falls. The Capper-Cramton Act specifically calls for the National Capital Planning Commission to be a party to the selection of lands to be acquired. A major thrust of the Act, and the intent of the Parkway authorization, was to protect the shorelines of the Potomac River from adverse development.

The National Park Service acquired the lands addressed by this bill as a result of the Act authorizing the construction of the Woodrow Wilson Memorial Bridge, because the Federal Highway Administration, which had purchased these lands and found they were not needed for highway purposes, transferred them to the National Park Service in 1978. This transfer was approved by the National Capital Planning Commission. These lands were to be managed as a part of the open space park system that the National Park Service manages along the Potomac River shoreline, and the lands were formally accepted by the National Park Service.

The National Capital Planning Commission is charged with protecting the Federal interests along the Potomac River shoreline in the National Capital Region. In our land-managing role, however, we continue to have concerns about the potential excessive heights of highrise buildings along the Potomac River, potential excessive filling of the spring-fed scenic cove in the Potomac River and its impact on the recently improving water quality, the protection of the scenic entrance to the Nation's Capital, and the viewshed from the river and the Georgia Washington Memorial Parkway. However, rather than viewing these concerns as impediments, we view them as opportunities to work with all parties involved to ensure sensitive development that meets all the parties' needs and concerns.

We believe that the transfer of these lands under the conditions outlined a Memorandum of Understanding between the Commission and the developer, which was signed May 7, 1985, will protect the Federal interests. These interests relate to the Federal parklands adjoining the site on both the north and the south and the longstanding Federal interests and concerns about development along the shoreline of the Potomac River in the National Capital Region. These interests also include public access to the Potomac River shoreline, and views of Smoot Bay as seen from the river, the Mount Vernon Memorial Highway, and the Virginia shoreline. The Commission has studied this issue at length and feels that the purposes for which it approved our acquisition of these lands will be served by the Memorandum of Understanding. We defer to the Commission in this regard. H.R. 3003 would incorporate the provisions and conditions established by the Memorandum as part of the land transfer.

In previous testimony before the House and Senate on this and other similar legislation, the National Park Service requested that legislation be deferred until we had analyzed whether or not an equal value exchange or other payment for the lands to be conveyed is appropriate. We have concluded that analysis, and have determined that, due to the extensive restrictions contained in the Memorandum of Understranding between the developer and the National Capital Planning Commission, outright sale in order to provide a return of fair market value to the Treasury would provide only minimal revenue. Further, such a sale would not provide protection for the Potomac River shoreline, nor would it limit development adjacent to Smoot Bay. Under H.R. 3003, however, the interests the United States would acquire from the developer (reduced scale and height of buildings, public open space, and commitment not to fill a major portion of Smoot Bay) would help achieve Potomac River shoreline protection. We understand this to be a Federal responsibility, based on the National Capital Planning Act and the Capper-Cramton Act.

We remain concerned that provisions in the legislation may not be binding on the developer or its successors in title once the conveyance and grant of access are completed. Prior to granting access across the land that would be conveyed, we recommend that an escrow account equal to 50 percent of the fair market value, unencumbered, of the lands proposed for transfer would be established in an escrow account to ensure that:

a. the terms and conditions of the easement in paragraph b(2)(D) are met; and

b. that the construction of access across public recreation open space will be done in a sensitive manner.

If the Maryland-National Capital Park and Planning Commission should find affirmatively that the terms and conditions of the deed of easement have not been met or that any of the remaining public recreation open space has been damaged, then the Commission shall have access to the escrow account as a result of nonperformance with the terms and conditions of the easement and/or for the purpose of rehabilitating and restoring the resources of the lands so transferred to their original condition. If no finding is made, then the escrow account shall be returned to the developer when the entire proposed project has been substantially completed.

We also recommend that paragraph (a)(1) of H.R. 3003 should be clarified to convey only "sufficient title" rather than all right, title and interest, in order to carry out the purposes of the legislation.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

P. DANIEL SMITH,
Deputy Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, H.R. 3003, as reported.

APPENDIX

NATIONAL CAPITAL PLANNING COMMISSION
1325 G STREET N.W.
WASHINGTON, D.C. 20576

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE
NATIONAL CAPITAL PLANNING COMMISSION
AND
JTL ENTERPRISES, LTD.

PURPOSE

This Memorandum of Understanding is for the purpose of setting forth the agreement of the National Capital Planning Commission (hereinafter called the Commission) and JTL Enterprises, Ltd. (hereinafter called the Developer), regarding the imposition of restrictions on the development of the Smoot Bay Waterfront. The purpose and intent of these restrictions shall be to maintain the Developer's flexibility to preserve the financial viability and architectural integration of the project, and to provide the Commission with overall assurances that the land will be developed with regard for Federal interests in development along the shoreline of the Potomac River in the National Capital Region, including but not limited to public access to and along the Potomac River, views of Smoot Bay, as seen from the River, the Mount Vernon Memorial Highway and the Virginia shoreline, and the jurisdiction of the U.S. Army Corps of Engineers over any proposed construction in the River at this gateway location. It is also intended that the restrictions contained herein will be incorporated by reference in proposed Congressional legislation that both parties will support to authorize the Secretary of the Interior to convey to the Maryland-National Capital Park and Planning Commission for public waterfront park use a parcel of Federal park-land containing approximately 55 acres of land on the north side of Smoot Bay.

NOW THEREFORE, the parties agree as follows:

DEFINITIONS

The following words shall have the following meanings in this Memorandum:

Area of Land to Which Memorandum of Understanding Applies: This agreement applies to land owned by the developer, including a portion of the Gudelsky Tract, which is currently zoned M-X-T located along and under Smoot Bay; it does not apply to the land also owned by developer located along Route 95 to the east of the subject waterfront property.

Building Height: The maximum height of a building inclusive of vertical access cores, mechanical areas and structures, and other non-occupied penthouses located on building rooftops, but excluding architectural ornamentation such as balustrades, spires, etc. All building heights shall be measured at the lowest point on the adjacent ground.

Commission: The National Capital Planning Commission.

Developer: JTL Enterprises, Ltd., its successors and assigns.

Existing Shoreline: The location of the mean low water mark on the Smoot Bay shoreline as it exists as of the date of this Memorandum.

Fill Area: The area between the existing and the new shoreline to be created by the developer.

Green Area: An area of land associated with, and located on the same tract of land as, a major building or group of buildings, in relation to which it serves to provide light and air or scenic, recreational, or similar purposes. Such space shall, in general, be available for entry and use by the occupants of the building or buildings involved but may include a limited proportion of space so located and treated as to enhance the amenity of the

development by providing landscaping features, screening for the benefit of the occupants of those in neighboring areas, or a general appearance of openness. Green area may include, but shall not be limited to, lawns, decorative plantings, wooded areas, landscaping areas covering structures that are not more than twelve (12) feet above ground level, sidewalks and walkways, active and passive recreational areas, and water surfaces that comprise not more than ten percent (10%) of the total green area. It shall not include parking lots or other vehicular surfaces or accessory buildings other than swimming pools or recreational buildings allowed by special exception as provided for in the Prince George's County Code, Subtitle 27. Zoning.

Riparian Development: Structures projecting beyond the new stabilized shoreline including but not limited to boat docks, piers and slips.

RESTRICTIONS

1. Preservation of Green Area Along Shoreline. The developer shall devote to green area at least 35% of an area to be defined as the portion of the property lying adjacent to and extending inland from the entire new shoreline of the property to a depth of 150 feet. The green area shall abut portions of the entire new shoreline totalling at least 2,500 linear feet. Green areas within 150 feet of the new shoreline shall not contain any buildings or structures but shall include a hiker-biker trail. The approximately 3 acre "Rosalie Island" site shall not be considered green area.

2. Other Green Areas. The developer shall devote at least 35% of the area of the Smoot Bay Waterfront parcels to green area.

3. Park Area on the Waterfront. The portion of the Developer's property, adjacent to the National Park Service property, adjoining the Woodrow Wilson Bridge and generally known as "Rosalie Island", shall be devoted to active or passive public recreational uses including, but not limited to, beaches and swimming facilities. This area shall, if requested by the Maryland-National Capital Park and Planning Commission (M-NCPPC), be dedicated to the M-NCPPC as a public park.

4. Hiker-Biker Trail. The Developer will dedicate or grant easements for hiker-biker trails, to be located essentially along the new shoreline, that will permit future connections with proposed trails, including the Potomac Heritage Trail, along the Potomac River north and south of Smoot Bay.

5. Filling in the Bay. Subject to the requirements of the U.S. Army Corps of Engineers, the developer may fill out beyond the existing shoreline to a maximum of 200 feet. However, fill north of the Gudelsky Tract may extend up to a maximum of 750 feet beyond the existing shoreline as measured perpendicularly from the existing shoreline. Such fill on the developer's property north of the Gudelsky Tract may not exceed 25 acres. The fill shall be part of the stabilization of the shoreline by the Developer. No filling shall be permitted in the Potomac River south of Rosier Point. It is recognized by the parties that neither the riverfront plan or the complete topographical maps of the property have been finalized as of this date and there may be extraordinary indentations in the shoreline which would disproportionately affect the desired continuous curve of the new shoreline. In such cases reasonable tolerance is to be allowed beyond the two hundred

foot limit; provided, however, that there is a limit of an additional 30 feet for such tolerance unless the Commission specifically agrees to allow further extensions.

The Developer shall provide for restoration or replacement for wetlands that are subject to the ebb and flow of the tide that may be adversely impacted by filling in the Bay. The developer will restore or replace as may be necessary said wetlands. All filling in the Bay will be done in accordance with the "Guidelines for Specification of Disposal Sites for Dredged or Fill Material under Section 404(b)(1) of the Clean Water Act contained in 40 CFR Part 230.

6. Marina Development. Subject to the requirements of the U.S. Army Corps of Engineers, a marina may be developed on the Bay north of the Gudelsky Tract. However, boat docks, piers and slips may not project more than 1,300 feet beyond the existing shoreline on the east side of the Bay nor more than 900 feet south of the developer's north property line (which is the southern boundary of the existing Federal parkland on the north side of the Bay).

Permitted uses within the Marina shall be of a marina-related character and architecturally integrated with the surrounding commercial and residential development. No uses within the Marina shall be permitted which would have an adverse effect on the Bay or adjacent development or which would constitute a detriment to the health, safety, or comfort of workers or residents in the area, due to but not limited to such factors as noise, smoke, odors, vibration, or dust. No buildings or structures shall be built over the boat docks, piers or slips in the Marina.

7. Other Riparian Development. Other than the Marina, no other riparian development beyond the new shoreline shall be permitted except that no more than three double-loaded piers up to 60 feet wide each (including the boat slips) extending up to a maximum of 150 feet out from the new bulkhead may be built in each of the following locations:

a. Within the first 500 feet south of the proposed harbor and so as not to obstruct the view from the water of the northernmost waterfront park.

b. Within the first 800 feet east of the tip of Rosier Point.

8. Building Heights: In general, there shall be a maximum height limit of 65 feet. There are two exceptions:

a. one tower building may be built up to a height of 150 feet on land north of the Gudelsky Tract.

b. Buildings up to 96 feet in height may be built either on the zoned portion of the Gudelsky Tract currently zoned M-X-T or to the north of that tract south of the existing Federal parkland.

9. Shoreline Stabilization. The Developer shall retain the right to bulkhead the entire shoreline, as may be necessary according to sound engineering practice, to stabilize the shoreline. The Developer will maintain or provide where practicable trees, shrubs and other landscaping along the entire shoreline.

10. Parking. Parking areas or compounds shall to the extent practicable be designed so as not to be seen from the water. This will be accomplished through the use of landscaping, screening and similar means.

11. Views. The design of the entire waterfront development shall, to the extent possible, preserve and architecturally enhance views from the Potomac River and the Virginia shoreline.

12. Wetlands. Building activities in wetlands shall utilize the best practices available to minimize adverse impacts and shall follow applicable U.S. Army Corps of Engineers and State of Maryland permitting procedures and regulations.

13. Protection of the Flood Plain. Any construction in the flood plain shall utilize the best practices available to minimize adverse impacts and shall follow applicable State of Maryland and Prince George's County permitting procedures and regulations.

14. Landscaping

The Developer agrees to landscape all proposed development in order to restore as much of the tree covered character of the shoreline and the hillside as practicable.

15. Termination

The Commission and the Developer will cooperate fully toward passage of the bill as quickly as possible. In the event that Congress does not pass the bill to transfer the National Park Service property within 60 legislative days (or longer as mutually agreed to by letter) then this agreement shall be null and void.

16. Amendments

This agreement may be modified at any time by the mutual agreement of NCPC and James T. Lewis Capital Enterprises, Ltd. regarding aspects of the development which serve to carry out the general intent of this agreement and which would improve the attractiveness of the development.

WHEREFORE, we have set our hands and seals this 7th day of May, 1985.

JTL, Inc.

By _____

James T. Lewis, President

National Capital Planning Commission

By _____

Robert J. Nash, Vice Chairman